

STATE OF CALIFORNIA  
BEFORE THE  
DEPARTMENT OF PERSONNEL ADMINISTRATION

In the Matter of the Appeal by )

Case No. 97-1194

**[REDACTED]** )

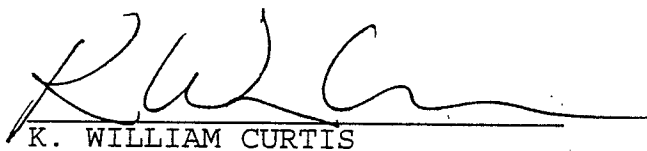
DECISION

From Demotion in Lieu of Layoff )  
from the Position of Associate )  
Life Actuary to the Position of )  
Senior Actuarial Statistician with )  
the Department of Insurance at )  
Los Angeles )

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The attached Proposed Decision of the Administrative Law  
Judge is hereby adopted as the Department's Decision in the above  
matter.

IT IS SO ORDERED: December 29, 1997



K. WILLIAM CURTIS  
Chief Counsel  
Department of Personnel  
Administration

In the Matter of the Appeal by ) Case No. 97-1194  
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 [REDACTED] ) DECISION  
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 Los Angeles )

This matter came on regularly for hearing before Susan G. Kleinman, Administrative Law Judge, State Personnel Board, on September 24, 1997, at Los Angeles, California.

Respondent was represented by Brian Fitzgerald, Staff Counsel, Department of Insurance.

Evidence having been received and duly considered, the Administrative Law Judge makes the following findings of fact and Proposed Decision:

I

Jurisdiction

The above demotion in lieu of layoff effective March 14, 1997, and appellant's appeal therefrom, comply with the procedural requirements of Government Code section 19997.

The matter was originally calendared for hearing May 13, 1997. It was continued upon respondent's request due to the unavailability of key witnesses. The case was recalendared for hearing July 1, 1997 and continued on the day of the hearing by another Administrative Law Judge because a hearing calendared earlier in the day lasted longer than expected. It was recalendared, heard, and submitted for decision September 24, 1997.

II

Background

Prior to the 1996-1997 fiscal year the Department of Insurance experienced a cut in revenues amounting to well over 14 million dollars. In addition, there was a two million dollar reduction in the Governor's Budget allocated to the department, and a seriously diminished capacity to generate further revenues.

The department lost a major lawsuit (National Association of Independent Insurers v. John Garamendi) which required that they return seven million dollars in improperly collected fees,

( [REDACTED] continued)

and were prohibited from utilizing the examination fee process to bill insurers for consumer complaints. This amounted to an inability to generate seven and one half million dollars.

The department lost an additional six and one half million dollars in early 1996, in an adverse settlement of a lawsuit (National Fire v. Garamendi). Accordingly, respondent was prohibited from assessing insurers for workload unless the matter directly pertained to claimant fraud/law enforcement.

As a result of this fiscal crisis, the respondent was forced to reduce its staffing. Appellant's position was eliminated, along with approximately 95 other employees.

### III

Appellant alleges that there was no fiscal crisis and that the demotion in-lieu of layoff was made in bad faith. He argued that the department retaliated against him because he had filed several grievances preceding his layoff, and received a formal reprimand which was later revoked in 1997.

Appellant testified that he had experienced reprisal by [REDACTED], Chief of the Financial Surveillance Board, in not promoting him to the Senior Actuary position. He admitted that he did not know if [REDACTED] was the person who determined the order of layoff. He admitted that [REDACTED] had authored appellant's good performance reports.

( [REDACTED] continued)

Appellant presented a quarterly report he testified that he received from the legislature, prepared after the layoffs, indicating that the department as of June 1997, had a five million dollar balance. He also presented a department newsletter which reflected that as of August 1996, his job classification was not included in the budget cut.

#### IV

[REDACTED], Supervisor of the Budget Office, testified that the report presented by appellant indicated only the cash balance on deposit. It does not reflect those ongoing obligations. Generally, there was a two million dollar difference between disbursements and receipts. In June 1996, the report reflected that disbursements exceeded receipts by 12 million dollars (less a 14 million dollar loan). According to [REDACTED] the report reflected that the department was operating on a very tight budget, even after the layoffs were instituted.

[REDACTED] also testified that the department's August newsletter, presented by appellant, reflected only an "evolutionary" layoff process. The final decision on layoffs were decided sometime later.

V

Appellant's arguments are rejected. There was no evidence to connect [REDACTED] with the decision to layoff appellant. The evidence established that the department experienced a serious fiscal crisis. The report presented by appellant reflected a surplus only after the layoffs were initiated and did not reflect those ongoing financial obligations. The filing of grievances preceding the layoff and a revoked official reprimand do not in themselves indicate bad faith, and cannot restrict respondent's action in the interest of economy, to demote appellant in lieu of layoff.

\* \* \* \* \*

PURSUANT TO THE FOREGOING FINDINGS OF FACT, THE ADMINISTRATIVE LAW JUDGE MAKES THE FOLLOWING DETERMINATION OF ISSUES:

Government Code section 19997.14 provides that an employee may appeal to the Department of Personnel Administration after receiving notice of layoff "on the ground that the required procedure has not been complied with or that the layoff has not been made in good faith or was otherwise improper." In the instant case, respondent established that the demotion in lieu of layoff resulted from a critical reduction in revenues.

[REDACTED] continued)

Appellant failed to establish that the layoff was not made in good faith.<sup>1</sup> Accordingly, the appeal from demotion in lieu of layoff must be denied.

\* \* \* \* \*

WHEREFORE IT IS DETERMINED that the demotion in lieu of layoff against [REDACTED] effective March 14, 1997 is hereby sustained.

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<sup>1</sup> The parties stipulated that the procedures were followed.

( [REDACTED] continued)

I hereby certify that the foregoing constitutes my Proposed Decision in the above-entitled matter and I recommend its adoption by the Department of Personnel Administration as its decision in the case.

DATED: October 23, 1997

A handwritten signature in cursive script, appearing to read "S. G. Kleinman", written over a horizontal line.

Susan G. Kleinman  
Administrative Law Judge  
State Personnel Board